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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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| RUDY NEVAREZ JR., |) | Case No. SACV 11-1166 RNB |
| Plaintiff, |) | |
| vs. |) | ORDER AFFIRMING DECISION OF |
| |) | COMMISSIONER |
| MICHAEL J. ASTRUE, |) | |
| Commissioner of Social Security, |) | |
| Defendant. |) | |

The Court now rules as follows with respect to the two disputed issues listed in the Joint Stipulation.¹

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¹ As the Court advised the parties in its Case Management Order, the decision in this case is being made on the basis of the pleadings, the administrative record ("AR"), and the Joint Stipulation ("Jt Stip") filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g).

1 **A. Reversal is not warranted based on the ALJ’s alleged failure to properly**
2 **consider the opinion of plaintiff’s treating psychiatrist (Disputed Issue No.**
3 **1).**

4 Disputed Issue No. 1 is directed to the ALJ’s alleged rejection of the opinion
5 of plaintiff’s treating psychiatrist. (See It Stip at 3-8.)

6 The record indicates that Robin Campbell, plaintiff’s case manager at College
7 Community Services (“CCS”), completed an assessment stating that “[d]ue to
8 irritability, impulsive decision making and violent outbursts, [plaintiff] is unable to
9 obtain and maintain steady employment that will provide a source of income.” (See
10 AR 348.) Campbell signed the assessment on March 12, 2008, and a CCS physician
11 signed it on April 8, 2008. (See AR 351.)

12 Preliminarily, the Court concurs with the Commissioner’s argument, which
13 plaintiff does not dispute, that Campbell’s opinion was not entitled to the deference
14 owed to that of a treating or examining physician because she was a case manager,
15 which is not an acceptable medical source under the Commissioner’s regulations. See
16 20 C.F.R. § 416.913(a). Nor was Campbell an acceptable medical source as part of
17 an “interdisciplinary team” under Gomez v. Chater, 74 F.3d 967, 971 (9th Cir. 1996),
18 because the record did not show that she worked closely under a physician’s
19 supervision or acted as a physician’s agent. See Molina v. Astrue, 674 F.3d 1104,
20 1111 (9th Cir. 2012) (finding that nurse practitioner was not part of an
21 interdisciplinary team because record did not show that she worked under a
22 physician’s close supervision). The fact that a CCS physician co-signed Campbell’s
23 assessment approximately three weeks after she wrote it does not establish that the
24 assessment came from an acceptable medical source as part of an interdisciplinary
25 team. See Ramirez v. Astrue, 803 F. Supp. 2d 1075, 1082 (C.D. Cal. 2011) (declining
26 to attribute opinion of social worker as that of an acceptable medical source in
27 absence of evidence of close working relationship with physician, despite the fact that
28 physician co-signed assessment three weeks after social worker completed it).

1 Accordingly, Campbell was an “other source” under the Commissioner’s
 2 regulations, and the ALJ therefore could properly reject her opinion for reasons
 3 germane to her assessment. See 20 C.F.R. § 416.913(d); see also Molina, 674 F.3d
 4 at 1111 (“The ALJ may discount testimony from these other sources if the ALJ gives
 5 reasons germane to each witness for doing so.”) (internal quotation marks omitted).
 6 The ALJ’s stated reason for rejecting the assessment was that it concerned a
 7 determination reserved to the Commissioner and therefore would not be given any
 8 special significance. (See AR 16.) The Court finds that this reason was germane to
 9 Campbell’s opinion. See 20 C.F.R. § 416.927(d)(1) (medical source opinion that
 10 claimant is disabled concerns issue reserved to Commissioner and therefore does not
 11 mean that a claimant will be found disabled); see also Belthius v. Astrue, 2011 WL
 12 861905, at *3 (W.D. Wash. Feb. 15, 2011) (ALJ properly assigned little weight to
 13 chiropractor’s opinion that plaintiff was disabled because it concerned issue reserved
 14 to Commissioner).

15 The Court therefore finds and concludes that reversal is not warranted based
 16 on the ALJ’s alleged failure to properly consider the CCS assessment.

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 18 **B. Reversal is not warranted based on the ALJ’s alleged failure to make a**
 19 **proper adverse credibility determination with respect to plaintiff**
 20 **(Disputed Issue No. 2).**

21 Disputed Issue No. 2 is directed to the ALJ’s adverse credibility determination
 22 with respect to plaintiff. (See Jt Stip at 8-13.)

23 An ALJ’s assessment of pain severity and claimant credibility is entitled to
 24 “great weight.” Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v.
 25 Heckler, 779 F.2d 528, 531 (9th Cir. 1986). Under the “Cotton test,” where the
 26 claimant has produced objective medical evidence of an impairment which could
 27 reasonably be expected to produce some degree of pain and/or other symptoms, and
 28 the record is devoid of any affirmative evidence of malingering, the ALJ may reject

1 the claimant's testimony regarding the severity of the claimant's pain and/or other
2 symptoms only if the ALJ makes specific findings stating clear and convincing
3 reasons for doing so. See Cotton v. Bowen, 799 F.2d 1403, 1407 (9th Cir. 1986); see
4 also Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir. 1996); Dodrill v. Shalala, 12
5 F.3d 915, 918 (9th Cir. 1993); Bunnell v. Sullivan, 947 F.2d 341, 343 (9th Cir. 1991)
6 (en banc).

7 Plaintiff testified that he was unable to work because of depression, mood
8 swings, anxiety, isolation, and problems controlling his anger. Specifically, the crux
9 of plaintiff's testimony was that he needed to avoid people in the workplace because
10 he had problems controlling his anger toward them. (See AR 43-48.) Plaintiff also
11 testified that he was limited to lifting no more than 50 pounds (see AR 39), and that
12 he experienced shortness of breath and wheezing due to his asthma (see AR 47). On
13 his adult function report, plaintiff indicated that he was limited to walking 1/2 mile
14 at a time. (See AR 158.) The ALJ determined that although plaintiff's medically
15 determinable impairments could reasonably be expected to cause the alleged
16 symptoms, plaintiff's statements concerning the intensity, persistence, and limiting
17 effects of these symptoms were not credible to the extent they were inconsistent with
18 the ALJ's RFC assessment. (See AR 16.)

19 The Commissioner has cited various reasons to support the ALJ's adverse
20 credibility determination, such as plaintiff's daily activities (see Jt Stip at 11-13), but
21 the ALJ did not rely on those reasons, and the Court consequently is unable to
22 consider them. See Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003); Ceguerra
23 v. Sec'y of Health and Human Svcs., 933 F.2d 735, 738 (9th Cir. 1991). In fact, it
24 appears that the only reason provided by the ALJ to support his adverse credibility
25 determination was that plaintiff's "general claim of disabling symptoms is not
26 supported by the record." (See AR 15-16.) Although an inconsistency between
27 plaintiff's testimony and the objective medical evidence of record could constitute a
28 reason on which the ALJ could properly rely in support of his adverse credibility

1 determination, see Morgan v. Comm’r of Soc. Sec., 169 F.3d 595, 600 (9th Cir.
2 1999), it cannot constitute the sole reason supporting the adverse credibility
3 determination. See Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005) (lack of
4 medical evidence cannot form sole basis for discounting testimony but is a factor that
5 can be considered in credibility analysis).

6 Nonetheless, the ALJ’s RFC assessment specifically accounted for the claimed
7 symptoms attributable to plaintiff’s anti-social personality and mood disorders by
8 precluding plaintiff from “intense, interpersonal interaction” and restricting plaintiff
9 to “object-oriented environments.” (See AR 14.) The ALJ’s RFC assessment also
10 specifically accounted for plaintiff’s allegations of racing thoughts, and difficulties
11 with memory, comprehension, and concentration by restricting plaintiff to jobs
12 involving “simple, repetitive tasks, in an object-oriented environment, with no
13 intense, interpersonal interaction.” (See id.) The ALJ’s RFC assessment also
14 specifically accounted for plaintiff’s asthma and complaints of wheezing and
15 shortness of breath by precluding plaintiff from “exposure to dust, fumes, and gases.”
16 (See id.) Further, the ALJ’s RFC assessment also was consistent with plaintiff’s
17 allegations that he was limited to lifting no more than fifty pounds and walking a half
18 mile before needing to rest; the ALJ limited him to “occasionally lifting and carrying
19 fifty pounds and frequently lifting and carry twenty-five pounds,” and to “sitting for
20 six hours and standing or walking for six hours in an eight-hour work day.” (See id.)

21 The vocational expert identified jobs (i.e., warehouse worker, kitchen helper,
22 packer) that plaintiff could do despite the limitations imposed by the ALJ. (See AR
23 17, 57.) Accordingly, the Court finds that the ALJ’s error in not providing sufficient
24 reasons in support of his adverse credibility determination was harmless in that it was
25 inconsequential to the ultimate determination of non-disability. See Carmickle v.
26 Comm’r, Social Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (errors in reaching
27 adverse credibility determination were harmless because, inter alia, the RFC
28 assessment was largely consistent with plaintiff’s testimony); Barrow v. Astrue, 2011

1 WL 4500846, at *16-*17 (E.D. Cal. Sept. 27, 2011) (any error in reaching adverse
2 credibility determination was harmless because record confirmed that ALJ's RFC
3 determination accounted for the sorts of functional limitations plaintiff claimed he
4 had).

5 The Court therefore finds and concludes that reversal is not warranted based
6 on the ALJ's alleged failure to properly consider plaintiff's testimony.

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8 IT THEREFORE IS ORDERED that Judgment be entered affirming the
9 decision of the Commissioner and dismissing this action with prejudice.

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11 DATED: June 12, 2012

A handwritten signature in dark ink, appearing to read "Robert N. Block", is written over a light gray rectangular background.

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14 ROBERT N. BLOCK
UNITED STATES MAGISTRATE JUDGE
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